



PHOTOGRAPHIC, LINEUP, AND ON-SCENE IDENTIFICATIONS

Directive: 14 – 119

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I. PURPOSE

The purpose of this Directive is to provide guidance to Department of General Services Maryland Capitol Police (DGS-MCP) officers on the use of photographs, lineups, and on-scene identifications.

II. POLICY

- A. Police officers may use photographs, lineups, and on-scene identification in order to identify guilty parties and exonerate the innocent.
- B. The use of photographs, lineups and on-scene identifications will be within the parameters of legal, ethical, and professional standards; and will be done in a manner that does not jeopardize subsequent legal proceedings involving the presentation of any evidence obtained by investigators.
- C. All officers utilizing these investigative techniques will do so in a manner that is objective, impartial and protects the constitutional rights of all parties.
- D. All photographic and/or on-scene identification, as well as lineups, will be done in conformity with this Directive and all federal, State and local laws.

III. DEFINITIONS

- A. Stack form – A sequential photo display that consists of six or more photographs stacked on top of one another, with the photograph of the suspect secreted within the stack. The entire stack is then handed to the witness.
- B. Simultaneous photographic arrays
 - 1. Folder form – Six or more photographs are placed in separate spaces cut out of the folder for the photographs. The photograph of the suspect is placed in one of the open spaces.
 - 2. Sheet form – A computer generated sheet containing printed photographs, one of the suspect and the remaining photographs picked by the computer program based upon data entered prior to selection. This process may also be referred to as “digital imaging system.”

- C. Lineup – “A police procedure in which a person suspected of a crime is placed in a line with several other persons and a witness to the crime attempts to identify the suspect as the person who committed the crime. The procedure must not be “unduly suggestive”, or the identification will not be admissible in a criminal trial.”
1. Simultaneous Live Lineup – A procedure whereby a group of individuals is viewed at the same time by the witness.
 2. Sequential Live Lineup – A procedure whereby the witness views the individuals in the lineup one at a time.
- D. On-scene identification – A procedure whereby a witness views a suspect in the field to determine if the witness can identify the suspect as the person who committed a crime. This procedure is also referred to as a “show up”, can be done on the scene of a crime or at another location where the suspect is located.
- E. Blind testing procedure – When this method is used, the police conducting the investigative procedure does not know which person or photograph is the suspect. This practice eliminates the possibility of the witness being influenced in some way by the officer conducting the lineup or providing the photographs to be viewed.
- F. Positive identification – When a witness is reasonable sure, but not positive, that the person identified is the suspect that committed the crime.
- G. Tentative identification – When a witness is reasonably sure, but not positive, that the person identified is the suspect that committed the crime.
- H. Witness – As used in this Directive, any individual who saw someone commit a crime.

IV. INVESTIGATIVE PROCEDURES

- A. Only one witness will view the suspect or collection of photographs at a time.
- B. Only one suspect will be shown at a time in a photographic array, stack of photographs, or live lineup. If there are two or more suspects to be shown, each one will be placed in a different collection of photographs or lineup.
- C. Ensure that no writings or other information concerning previous arrests or suspected criminal activity are shown or communicated in any way to the witness.
- D. Assure the witness that regardless of whether he or she identifies someone, the police will continue to investigate the case.
- E. The viewing should be done in an environment wherein no outside influences may be exerted upon the witness or affect the outcome. Sometimes family members or friends may want to view the process and will make comments or suggestions to the witness during the viewing. This is disruptive and may somehow affect the outcome. Therefore, the process should take place without other persons in the room and in an area wherein nobody is close enough to the witness to be able to distract or disrupt the process or influence the witness.

- F. Police officers will exercise caution that they don't make any inappropriate or suggestive comments within the hearing of any witness. Officers will make sure that their body language, facial expressions, or other forms of communication do not influence the outcome of the process.
- G. The witness should be instructed prior to the photo or live lineup identification procedure that the perpetrator may not be among those in the photo array or live lineup and, therefore, he or she should not feel compelled to make an identification.
1. A suspect has been developed,
 2. Any of the persons viewed are suspected of having committed a crime, or
 3. The collection of photographs contains a photograph of a person that has been developed as a suspect.
- H. No officers will say or do anything that places any emphasis or draws attention to anyone of the photographs/persons being viewed by the witness or influence the witness' selection. The process will be conducted in a manner that the suspect does not unduly stand out.
- I. The documentation that will be generated by the viewing of person(s) or photograph(s) by a witness will include, at a minimum, the following:
1. Date, time, lighting conditions and location that the viewing took place.
 2. Name of all witnesses that viewed the person(s) or photographs.
 3. Name and identification number of the police officer that handled the display of photographs or live lineup, as well as any other police officers present during the process.
 4. The names of any other non-law enforcement persons present during the process.
 5. The substance of any conversation that any police officer or other police employee had with the witness incidental to the viewing of the person(s) or photographs. All instruction given to a witness should be carefully documented, as well as the name of the officer who provided instructions.
 6. In the case of an on-scene viewing, the name and ID number of the officer who observed and detained the suspect, as well as the reason(s) why the suspect was detained.
 7. The distance between the witness and the suspect during an on-scene viewing.
 8. Any statements made or questions asked by the witness upon viewing the person or photograph and after identifying a person or photograph. Also record the witness' own words concerning how sure he or she is concerning a positive or negative identification.
 9. The name, date of birth and other identifying information of each person viewed and in sequence so that the officer is able to re-create the photographic display, stacks of photographs or lineup if it is necessary to do so.
 10. The condition of the suspect when the lineup or on-scene viewing took place, i.e. was he standing, sitting, handcuffed, injured, bleeding, intoxicated, etc.
 11. The clothing that the suspect was wearing when the identification was made.
 12. If the participants being viewed in a live lineup did any type identification action at any time, such as speaking, moving, etc., the action will be documented in a detailed, accurate and thorough manner.

V. PHOTOGRAPH IDENTIFICATION

- A. The photograph of the suspect should not be over three years old. However, an older photograph may be used if a more recent one is not available and the photograph depicts a true likeness of the suspect.
- B. The photograph selected should resemble the suspect's description or appearance at the time of the incident if multiple photographs of the suspect are reasonably available to the investigator.
- C. At least five fill-in photographs will be shown to the witness in addition to the photograph of the suspect.
- D. All photographs used will be of individuals that are similar in race, sex, complexion, approximate age, build, facial hair, hairstyle and color, scars, visible tattoos, glasses, hat and dress. If there is any feature or characteristic that is "unduly suggestive" and makes the photograph of the suspect stand out from the others, some or all of the fill-in photographs should be replaced, or perhaps a different photograph of the suspect included in the collection of photographs.
- E. The "blind testing procedure" should be utilized if feasible to do so. Thus, the officer that conducts the procedure (i.e. shows the photographs and/or provides instructions to the witness) should not know which of the photographs is that of the suspect.
- F. If a form is not utilized, the instructions given to the witness prior to viewing the photographs must be recorded. The following instructions are recommended:
 - 1. I have some photographs that I am going to show you.
 - 2. Please look at each of the photographs carefully.
 - 3. If you should see someone that you have ever seen anywhere, please point the individual out to me and let me know where you have seen him/her or how you know him/her.
- G. After giving the instructions to the witness, the officer will provide no information concerning the person selected until the witness, the officer will present the stack of photographs to the witness, or place the folder or sheet of photographs in front of the witness.
- H. The officer will then record any comments made by the witness while viewing the photographs.
- I. If a positive or tentative identification is made, the officer will provide no information concerning the person selected until the witness has confirmed the identification with a verbal statement of certainty and a brief written statement on the back of the photograph. The officer will turn the photograph over and ask the person who made the identification to write a short sentence stating how he/she knows the person that was identified. Then the officer will ask the witness to sign their name and write the date and time under the sentence. By following this procedure, there should be no issue during the trial as to who was identified and how, as well as the date and time of the identification.
- J. A photograph that has been identified will not be used again and must be preserved as evidence, as well as the fill-in photographs. All photographs will be preserved in their original condition.

- K. When showing a collection of photographs containing a new suspect to the witness, avoid using fillers that the witness has already seen when showing other suspects. If more than one witness will view the same collection of photographs containing a suspect, the position of the suspect's photograph will be changed for each witness.

VI. LINEUPS

- A. The fillers (non-suspects) should fit the description of the suspect. Most importantly, the fillers should match the suspect in significant features.
- B. There must be a minimum of four fillers for each identifications procedure.
- C. The suspect should be placed in a different position for each lineup if there are multiple witnesses that are going to view the lineup.
- D. Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.
- E. The officer conducting the live lineup should not know which of the individuals is suspected of having committed the crime.
- F. Police officers present and other police employees will not, at any time, do or say anything that might influence the outcome of the procedure.
- G. The officer conducting the lineup will instruct the witness as follows:
 - 1. He/she will be asked to view a number of individuals;
 - 2. It is just as important to clear innocent persons from suspicion as to identify guilty parties;
 - 3. Individuals depicted in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
 - 4. The person who committed the crime may or may not be in the lineup being presented.
 - 5. Regardless of whether an identification is made, the police will continue to investigate the incident.
 - 6. The procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.
 - 7. The individuals viewed are in random order.
 - 8. If the witness sees someone that he/she has ever seen anywhere, the witness is to tell the police officer conducting the lineup where the individual was seen or how he/she knows the individual.
 - 9. The witness should look at each individual until such a time as the witness has made a statement of certainty.
 - 10. All individuals will be shown, even if an identification is made.
 - 11. If an identification is made, police officers or other police employees will not make any statements concerning the identified individual until such time as the witness has made a statement of certainty.
 - 12. It is critical that the witness not discuss the identification procedure or its results with other witnesses involved in the case. Contact with the media is discouraged.

- H. If the lineup will be sequential, the police officer conducting it will tell the witness that the individuals will be viewed one at a time. If the lineup will be simultaneous, the officer will tell the witness that he/she will be shown several individuals at the same time.
- I. The police officer conducting it will also ensure that any identification actions (e.g., speaking, moving, etc.) are performed by all members of the lineup.
- J. If the suspect has been charged, the suspect's attorney must be notified prior to the lineup and be given the opportunity to be present. If the suspect hasn't been charged, the attorney need not be notified.
- K. Whether identification is made or not, any comments made by a witness while viewing the lineup will be carefully recorded.
- L. If possible, preserve the presentation of the lineup via video or by photographing the procedure.

VII. ON-SCENE IDENTIFICATION (SHOW-UPS)

- A. The description of the suspect should be determined and documented before a show-up is conducted.
- B. A one-on-one identification may be used by any police officer investigating a crime in the following situations:
 - 1. The suspect is located and detained after a crime has been reported to the police and the description of the reported perpetrator is similar to that of the person detained;
 - 2. When it is reasonable to believe that the perpetrator could have reached the location where he/she is being detained in the amount of time that has passed since the time of the reported crime and the time the suspect was detained by the police; and
 - 3. There is insufficient time to assemble photographs or a multi-person lineup before a suspect being detained will have to be released.
- C. Whenever feasible, steps should be taken to prevent the suspect from seeing the witness that views the suspect during the show-up. It is critical that the witness be able to clearly see the suspect.
- D. Multiple witnesses should be separated whenever feasible and asked not to discuss the case with other persons.
- E. One witness should be transported per vehicle to the location where the suspect is being detained. This prevents a witness from influencing other witnesses, limits the legal impact of the suspect's detention, and prevents the suspect from containing the crime scene after the fact.
- F. Determine if the witness normally wears glasses or corrective lenses at the time of the viewing of the suspect.
- G. After the witness views the suspect, the witness should be kept separated from other witnesses until after all witnesses have viewed the suspect.

- H. When an officer is transporting a witness to a location where a suspect has been detained; the officer should instruct the witness to let the officer know if he or she sees someone they recognize as the police vehicle approaches the location. The officer should also explain to the witness that just because the police are detaining someone does not necessarily mean that the person committed the crime.
- I. The officer should not communicate to the witness in any way, including but not limited to orally, in writing, or with gestures or facial expressions, that the suspect being detained has committed a crime.
- J. If the person detained is handcuffed, the handcuffs should be behind the back and not visible to the witness to avoid prejudicing the witness' identification. If possible, only one officer should be near the suspect when the viewing is done.
- K. If a positive identification is made, a written statement should be obtained from the witness that made the identification as soon as possible.